

FILED
COURT OF APPEALS
DIVISION II

2022 NOV -8 PM 2:43

STATE OF WASHINGTON

BY JIT
CLERK

No. 56745-8

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION II

IN RE THE ESTATE OF LEEANNA RUTH MICKELSON

HEATHER BENEDICT,

Petitioner/Appellant,

v.

JAMES MICKELSON,

Respondent.

ON APPEAL FROM THE SUPERIOR COURT
FOR PIERCE COUNTY

The Honorable Jennifer Andrews
Trial Court Cause No. 21-4-02178-5

APPELLANT'S INITIAL REPLY BRIEF

**MOTION FOR EXTENSION OF TIME TO REPLY TO 10/31/22
SECOND RESPONSE BRIEF OF RESPONDENT**

Heather Benedict
Appellant, In propria persona
1037 NE 65th Street
Box #81366
Seattle, WA 98115
Telephone (253) 209-7434

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I. Introduction

This probate matter was determined on May 16, 2016, when Pierce County Superior Commissioner Karena Kirkendoll signed and entered an Order of Adjudication of Intestacy and Heirship, a final decree of distribution of probate in re the *Estate of Leeanna Ruth Mickelson*, which went unchallenged within the four-month statutory window, under RCW 11.28.340, see addendum. The general rule is that a probate decree, as established on May 16, 2016, is *res judicata* and cannot be attacked collateral except for extrinsic fraud. No extrinsic fraud has been suggested. Probate has been closed. Given the priority of action rule, no other court can obtain jurisdiction other than the first probate.

On appeal are Judge Andrews's findings of fact and conclusions of law which disrupts the *res judicata* as established on May 16, 2016, and her bizarre new findings of fact that do not allude to any evidence of extrinsic fraud. Her written order greatly varies from her oral order. Judge Andrews states that

"Only Washington law is controlling on me" (TR. at P.2, Line 24-25), in which she is correct under RCW 11.04.015, but her oral ruling cites a Parentage Act, under RCW 26.26A, and is misplaced since the presumption of parentage is already met.

Before Judge Andrews was a petition to reopen probate only asking to compel a clerk to upload the established May 16, 2016 Order of Adjudication of Intestacy and Heirship into the public record. This six-year delay rests in the clerk's imaging department and its continued failure to issue a barcode to the order so that the order can be uploaded publicly.

The Appellant's mom died with no will, leaving a spouse to inherit the community property and four children to inherit 50% of her separate property. Nothing more. A statutory community property agreement under RCW 26.16.030 does not conflict with the descent and distribution laws under intestate succession, RCW 11.20.010. In construing the meaning of a statute, this Court must be committed to the following rules of statutory construction:(1) A statute which is plain needs no

construction, in *KING CTY. v. City of Seattle*, 1967. An attorney's remarks, statements, and arguments to the contrary are not evidence, nor can they alter a simple statute of descent and distribution.

II. Reply Arguments

a. Respondent's Motion to Dismiss Appellant's Appeal is barred under General Order 2016-1.

The Respondent's Motion on the Merits to Dismiss Appellant's Appeal, buried within his response brief, should not be considered because this Court has suspended the use of RAP 18.14, under General Order 2016-1. Consistent with RAP 18.14(k), In the interest of judicial economy, Division Two elects not to use the Motion on the Merits procedure authorized under RAP 18.14. Therefore, there is no authority to allow this motion to go forward.

The trial court has not addressed the missing barcode issue from the first probate and the concern of the six-year delay for the clerk to upload the May 16, 2016 Order of

Adjudication of Intestacy and Heirship publicly upon receipt from the commissioner. Therefore, it is premature to dismiss this probate and appeal until the final step of placing a barcode on this order is completed. This Court must remand this case back to the trial court to enter an order compelling the clerk to upload the May 16, 2016 order, under the obligations and duties of a clerk and according to RCW 2.32.050.

b. Respondent's argument that all community property passed to him via a statutory community property agreement is moot since under intestate succession, all community property transfers to the spouse per statute.

No statutory community property agreement has been admitted into court, and its admittance would have been required within 30-days of probate's opening, under RCW 11.20.010, to serve as a will substitute. However, its admittance into court may not be necessary since a statutory community property agreement would agree with and not conflict with the descent and distribution laws under intestate succession, RCW 11.04.015, therefore moot to discuss further.

There is no disagreement on the court's entry of the May 16, 2016 Order of Adjudication of Intestacy and Heirship as the final decree of distribution and descent. Two public officials signed their names on the order, including Commissioner Karena Kirkendoll and County Clerk Stephanie Meelap. CP 8-9. While not yet filed publicly, because the clerk received the order, the final decree is deemed as filed according to CR 58 (b) Effective Time. Judgments shall be deemed entered for all procedural purposes from the time of delivery to the clerk for filing.

Further, the order's existence and its delivery to the clerk are confirmed in a sworn declaration filed by the county clerk, Lu Ellen Scott, and verified as authentic by Pierce County Prosecuting Attorney Staff Jeanine Lantz (Heather Benedict vs. Lu Ellen Scott, Pierce County District Court Case #1A909291C). CP 38-44. The official transcription from May 16, 2016, further confirms the order's entry, as produced by Official Certified Pierce County Superior Court Transcriptionist

Adrienne Kuehl of Vernon & Associates, by way of utilizing the audio from an official audio compact disc produced by the county clerk's office under PCLGR 35. CP 10-18.

The filing of this probate, now on appeal, was an attempt to petition the court to enter an order directing the clerk's office to obtain the proper barcode to upload the May 16, 2016 Order, so it is available to the public. This order bears the clerk's signature attesting that it has already been "filed in open court May 16, 2016", yet this order and the clerk's minute entry are still unavailable, over six years later and has caused much confusion and unnecessary expense to the taxpayer. The clerk has failed to uphold her duty and oath of office and should be compelled to do her job. Under RCW 2.32.050, the clerk is to (3) To keep the records, files, and other books and papers appertaining to the court; (4) To file all papers delivered to her for that purpose in any action or proceeding in the court as directed by court rule or statute; (5) To attend the court of which she is a clerk and (10) To publish notice of the

procedures of the public records of the court. Indeed, the statute to which a clerk is held to does not call for sanctions to be entered against a citizen who expects the clerk to do their job. This statute remains unclear on what a citizen is supposed to do when a clerk's oath of office is not being upheld.

Under the priority of action rule, it is the first probate holds jurisdiction, everything else is *void abinitio*. Under the priority of action rule, the trial court that first obtains jurisdiction is the court in which this matter will normally proceed. See *Mutual of Enumclaw Ins. Co. v. Human Rights Comm'n*, 39 Wn. App. 213, 216, 692 P.2d 882 (1984). Once an action is commenced, "the court is deemed to have acquired jurisdiction and to have control of all subsequent proceedings." RCW 4.28.020. CR 3 clearly and unmistakably provides that an action is commenced today by service of a summons or by the filing of a complaint." *Curtis Lumber Co. v. Sortor*, 83 Wn.2d 764, 767, 522 P.2d 822 (1974). Therefore, Judge Andrews has

no jurisdiction but to have merged this matter with the closed probate.

Prior court opinions which come after the May 16, 2016 Order of Adjudication of Intestacy and Heirship suggest Ms. Benedict as frivolous. She is not; any reasonable person would assume that a county clerk will uphold her oath of office and perform her essential duties. When a clerk is in violation of their established statutory duties, described in RCW 2.32.050, it constitutes official misconduct and may be a gross misdemeanor pursuant to RCW 9A80.010(1)(b); 9A.80.010(2). An allegation of a criminal matter is not before this Court, as it is currently pending a confidential investigation by an independent Hearing Officer with the Pierce County Ethics Commission in complaint #2022-005.

The Respondent may have attempted to dismiss the second petition in the first probate entirely, but any attempt to dismiss the entire probate was a failure since the May 16, 2016 Decree was already the law of the case. The trial court's order

of dismissal on June 17, 2016 does not include any findings of fact nor conclusions of law, no evidence admitted, nor would it be required under CR 52 because it was not a final decree. The order of dismissal controlled the Petition for Order to Produce a Will, and did not affect the finality of said adjudications, as already established on May 16, 2016 Order of Adjudication of Intestacy and Heirship.

The July 17, 2016 Order of Dismissal only ruled that a Motion to Produce a Will had no legal authority to go forward and was affirmed by this Court (#49056-1-II). In its oral order, the trial court found that it does not need to independently compel an individual to produce a will since a default statute addresses this. Under RCW 11.20.010, any person having the custody or control of any will shall, within thirty days after he or she shall have received knowledge of the death of the testator, deliver said will to the court having jurisdiction or to the person named in the will as executor, and any executor having in his or her custody or control any will shall within

forty days after he or she received knowledge of the death of the testator deliver the same to the court having jurisdiction.

The trial court had already entered an order of intestacy; therefore, nothing further was required. The trial court correctly dismissed the second petition because no such will or will substitute exists. There has never been any order which attempts to alter original adjudication until now, where Judge Andrews ruled outside of her authority by entering findings of fact and conclusions of law which conflict with the May 16, 2016 Order of Adjudication of Intestacy and Heirship, which serves as *res judicata* and law of the case.

The only statutory scheme to have timely overturned the May 16, 2016 Order of Adjudication of Intestacy and Heirship would have been to offer a will (or will substitute) into evidence within 30-days, RCW 11.20.010, or contest the determination of heirship within four months, RCW 11.28.340. Respondent Mr. Mickelson and his attorneys did not do this; they took no action during the four-month window. The

confusing conjecture by Respondent's attorneys or the court does not substitute for an actual document that was never admitted into evidence and the record. No statutory community property agreement exists legally in this case because none has been entered into evidence, only referenced. What is significant is that for having no available response, they have billed about \$350,000 in attorney fees attempting to sanction the Appellant at every turn while having no will or other document to enter into evidence to contradict the original finding of intestacy and determination of heirship. Even if there were a statutory community property agreement, it would have mirrored the May 16, 2016 Order of Adjudication of Intestacy and Heirship.

Res judicata was established under RCW 11.28.340 when the May 16, 2016 Order went uncontested for four months after the notice was provided to all heirs, RCW 11.28.330. An adjudication of intestacy and heirship is deemed the equivalent of a final decree of distribution. Ms. Benedict

was automatically discharged and released to the same extent as if such person had dealt with a personal representative of the decedent. Therefore, the court does not hold personal jurisdiction over her any longer because her late mother's probate automatically closed in November 2016.

Any subsequent orders entered in both King and Pierce County Superior Court that attempt to overturn the May 16, 2016 Order of Adjudication of Intestacy and Heirship are *void abinitio* under RCW 11.28.340(2) since they come more than four months after the date of the adjudication of intestacy. This Court is barred from the same. Ms. Benedict has been automatically released and discharged from liability related to her late mother's estate, including court-imposed sanctions against her. The matters referenced in Judge Andrew's written order were not mentioned in her oral order which was entered over a week after her hearing. It should be noted that the King County Probate Case she references was filed on a separate petition, asking for letters of administration to distribute

Decedent's real property under the laws of intestate succession and is pending an appeal in Division I, Case No. 823639.

Albeit there is an appeal pending, its trial court ruling does not conflict with the May 16, 2016 Order of Adjudication of Intestacy and Heirship. It recognizes a statutory community property agreement controls only community property.

Judge Andrews had no authority to enter findings and conclusions that disagreed with the original findings in the first probate or to enter anything further since she had no jurisdiction over the probate matter completed with the first probate. The general rule is that a probate decree is *res judicata* and cannot be attacked collaterally except for extrinsic fraud. No appeal was taken on the May 16, 2016 Order. A decree of distribution from which no appeal is taken is final and conclusive upon all parties of whom the court has jurisdiction. *In re Phillips' Estate*, 1955. Mere error, no matter how clearly demonstrated after entry of the final decree, will not invalidate the court's decision. Neither can the decree be set aside, nor the

distributees treated as trustees even though it be shown that the decree was obtained through intrinsic fraud. *Krohn v. Hirsch*, 81 Wash. 222, 142 Pac. 647 (1914); *Meeker v. Waddle*, 83 Wash. 628, 145 Pac. 967 (1915); *Davis v. Seavey*, 95 Wash. 57, 163 Pac. 35 (1917); *In re Baker's Estate*, 27 Wn. 2d 933, 181 P. 2d 826 (1947).

The Court should strike all records of any other probate, which only confuses the May 16, 2016 *res judicata* final decree. The only authority Judge Andrews would have been to enter an order compelling the clerk to upload the May 16, 2016 Order of Adjudication of Intestacy final decree publicly, and to merge this probate with the first probate opened on May 16, 2016.

c. Reply to Respondent's effrontery use of Ms. Benedict's first name.

Respondent's reference to the Appellant as "Heather" is effrontery, and its utility must be questioned. Ms. Benedict objects to being called by her first name as it is disrespectful

and not necessary. No confusion could possibly result from alluding to "Ms. Benedict" and "Mr. Mickelson" instead of "Heather" and "James."

III. Motion for Extension of Time for Appellant to Reply to Respondent's Second Response Brief filed October 31, 2022

a. Statement of Relief Sought

For this Court to follow the law of this case and grant Ms. Benedict at least 30 days to file a second Strict Reply.

b. Facts Relevant to Motion

Ms. Benedict filed her Opening Brief on June 16, 2022. Mr. Mickelson filed his Response Brief on August 1, 2022, which was late and so within his brief, he filed various motions including an extension of time, which was granted.

On July 20, 2022, this Court issued a sanction letter against Mr. Mickelson, noting that "Unless the Respondent's Brief or a Motion for Extension of Time is received within 10 days from the date of this letter, by August 1, 2022, the matter will be referred to the Clerk/Administrator. Sanctions in the

amount of \$250 may be imposed without further notice. See RAP 18.9(a).” Mr. Mickelson did not file a Motion for Extension of Time within 10 days from the date of the sanction letter, by or before July 30, 2022. The July 20, 2022 order was never challenged or appealed.

On August 1, 2022, at 1:59 PM, Mr. Mickelson filed his Respondent’s Brief and a Motion for an Extension of Time so that his late filing of his brief could gain permission from this Court to be accepted for filing. According to the Washington State Court’s website, the August 1, 2022 Response Brief was indeed accepted by the Clerk.

On August 28, 2022, Ms. Benedict timely filed her Reply Brief, replying to the August 1, 2022 Response Brief and her reply was indeed accepted by the Clerk.

On October 19, 2022, Commissioner Schmidt entered an order on Mr. Mickelson August 1, 2022 motions, granting him until October 31, 2022 to file an entirely new Respondent’s

Brief and any Reply Brief is due November 10, 2022. No RAPs were cited.

On October 26, 2022, the Clerk of this Court issued a letter notifying parties this matter was set for consideration on December 13, 2022.

On October 31, 2022, Mr. Mickelson filed a secondary Response Brief. The August 1, 2022 Response Brief has been removed from the record and replaced with the October 31, 2022 Response Brief. This gave Respondent over 100 days to draft a new response brief and raises issues that Ms. Benedict has not addressed in this Strict Reply.

c. Grounds for Relief and Argument

On July 20, 2022, this Court granted Mr. Mickelson an additional 10 days to file for a Motion for Extension of Time, through July 30, 2022. There was no exception and this order went unchallenged. Sanctions were to be imposed on August 1, 2022 against Mr. Mickelson. The fact that this Court ignored its own ruling from July 20th shows the thick bias to favor a

represented party over a *pro se* litigant. If this Court sets its own rules, they need to be followed. Here, they were not.

Rather than sanction Mr. Mickelson for already being late on August 1, 2022, Commissioner Schmidt granted him over 100 days to draft an entirely new Response Brief, then limited Ms. Benedict to a mere 10 days, with no reason and no authority to change the statute that grants her 30 days, other than his own personal bias against her. Commissioner Schmidt must step aside and follow the suit of Judge Worswick who has already recused herself from this matter due to conflicts of interest with the parties.

Ms. Benedict asks for an extension of time to allow her a minimum of 30 days after service of the new response brief to file her new strict reply, not 10 days as the October 19, 2022, ruling states. Under RAP 10.2(c), Appellant is allowed 30 days from service of a Response Brief to file a Strict Reply. The statute does not call for the Court to be biased against a *pro se* litigant and favor the represented parties, it calls for 30 days for

a reply and that is what Appellant Benedict should be afforded, RAP 10.2(c).

On October 26, 2022, this Court set its December 13, 2022 hearing date, acknowledging that all briefs filed are the final briefs to be considered. RAP 11.3(a) states that the clerk will advise all parties for all those who have filed briefs of the hearing date. Since a hearing date was established, the clerk suggests that the Respondent's August 1, 2022 Response Brief as the final brief filed. Therefore, it is necessary to strike the second response brief because the first response brief was already considered as filed response. No RAP supports such a "do over" after everything is filed and the matter is already set for consideration on December 13, 2022.

It is extremely prejudicial to grant Mr. Mickelson over 100 days to file a second Response Brief and ignore its own ruling as established on July 20, 2022 only because he has an attorney representing him, then limit Ms. Benedict to 10 days to file her second Reply Brief because she is *pro se*. Respondent's

second response brief is very different from the first brief and raises new arguments, thus a new strict reply cannot be fairly drafted and executed within 10 days.

This Court must treat litigants who are self-represented the same as those represented, since all men and women are to be created equal. Ms. Benedict should be entitled to over 100 days to file her Reply Brief, beyond the statutory 30 days, since Mr. Mickelson was granted over 100 days to file his second response brief.

IV. Conclusion

Because only the first probate has jurisdiction, everything that Judge Andrews did is void *ab initio* and should be stricken from the Court records in its entirety to avoid confusion. Despite the clerk not assigning a barcode to the May 16, 2016 order yet and its continued delay in making it publicly available, this order serves as the law of the case, *res judicata*, the final decree and distribution, and the automatic closure of probate.

This Court must allow Ms. Benedict the statutory window of at least 30 days to properly address the second Response Brief filed on October 31, 2022. This strict reply and motion for an extension of time was drafted in less than one week and does not address the second response brief. Therefore, justice cannot and should not be carried out in this current capacity.

Respectfully submitted this 6th day of November 2022.

Heather Benedict

Heather Benedict
Appellant, In propria persona

**V. CERTIFICATE OF WORD COUNT AND
SERVICE ON ALL PARTIES**

The APPELLANT'S REPLY BRIEF, MOTION FOR EXTENSION OF TIME TO REPLY TO RESPONDENT'S SECOND BRIEF and ADDENDUM consists of less than 6,000 words, allowable under RAP 18.17(c)(3).

I hereby certify that on the 6th of November, 2022, I sent foregoing brief, motion for extension of time and appendix with the Clerk of the Court of Appeals, Division II, via first class US Mail, postage prepaid and sent a copy to Respondent's Attorney of Record at the following:

Derek Bryne, Clerk
Court of Appeals Division II
909 A St STE 200
Tacoma, WA 98402

F. Hunter MacDonald
Attorney for James Mickelson, Respondent
2102 N Pearl St Ste 400
Tacoma, WA 98406-2550

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DIVISION II
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STATE OF WASHINGTON
BY
CLERK

Respectfully submitted this 6th day of November 2022.

Heather Benedict

Heather Benedict
Appellant, In propria persona

VI. ADDENDUM

FILED



16-4-00861-8 48904329 PTAJH 05-17-16

PIERCE COUNTY SUPERIOR COURT
COURT FORMS (12/01/02)
CLERK OF THE SUPERIOR COURT
TACOMA WA

for Adjudication of Intestacy and Heirship.

FILED
IN COUNTY CLERK'S OFFICE

16-4-00861-8

MAY 16 2016

Rept. Date Acct. Date Time
05/16/2016 05/16/2016 02:27 PM

PIERCE COUNTY, WASHINGTON
KEVIN STOCK, County Clerk
BY MA DEPUTY

Receipt/Item # Tran-Code Docket-Code
2016-03-07845/01 1200 \$FFR
Cashier: MLR

SUPERIOR COURT OF THE STATE OF WASHINGTON: HICKLER, HEATHER
FOR Pierce COUNTY Transaction Amount: \$240.00

Estate of <u>Lecanna Ruth Mickelson</u> Deceased.	No. <u>16 4 00861 8</u> PETITION FOR ADJUDICATION OF INTESTACY AND HEIRSHIP RCW 11.28.110
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Heather Jean Mickelson, Petitioner, by and through [his/her] attorney, Pro-se
of _____, petitions the court as follows:

1. Jurisdiction. Lecanna Ruth Mickelson, resident of Edgewood, Pierce
County, Washington, died without a will on May 1, 2012.

2. Heirs. The heirs of decedent whose names and addresses are known to
Petitioner are listed on the following schedule.

3. Descent. Pursuant to RCW 11.04.015, the property of the decedent descends
to the heirs at law in the distributive shares as shown on the following schedule.

4. Personal Representative. No appointment of a personal representative is
requested.

5. Petitioner. Petitioner is the daughter of decedent and resides
at 801 Dexter Ave N #629 Seattle, WA 98109

Petition for Adjudication of Intestacy and Heirship
NAME OF ATTORNEY
Address

COURT FORMS, 20.C.2

6. **Request to Court.** Petitioner requests the court to enter its Order of Adjudication of Intestacy and Heirship adjudicating that the decedent died intestate and those persons entitled to receive decedent's estate as [his/her] heirs at law.

Certificate

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge.

Dated May 16, 2016, at Tacoma, Washington.

Heather Jean Mickelson
[PETITIONER]

Prepared by:

Heather Jean Mickelson
Pro-Se [Attorney], WSBA #
 [Firm Name]
Attorneys for Petitioner

Petition for Adjudication of Intestacy and Heirship

NAME OF ATTORNEY
Address

SCHEDULE OF HEIRS OF DECEDENT

Name and Address	Relationship	Date of Birth (if a Minor)	Distributive Share of Decedent's Estate
<u>Erik John Mickelson</u> <u>2025 Freeman Rd E.</u> <u>Milton, WA 98354</u>	<u>Son</u>		<u>To be determined</u>
<u>Scott Christian Mickelson</u> <u>2804 90th Ave. E</u> <u>Edgewood WA 98377</u>	<u>Son</u>		<u>To be determined</u>
<u>Heather Jean Mickelson</u> <u>801 Dexter Ave. N #629</u> <u>Seattle, WA 98109</u>	<u>Daughter</u>		<u>To be determined</u>
<u>Gale Elizabeth McArthur</u> <u>6927 Park St. E</u> <u>Fife, WA 98424</u>	<u>Daughter</u>		<u>To be determined</u>

[All of the above heirs and distributees are of legal age.]

[DELETE DATE OF BIRTH COLUMN IF ABOVE SENTENCE APPLIES.]

James Albert Mickelson Husband
2804 90th Ave. E
Edgewood, WA 98377

To be determined

Petition for Adjudication of Intestacy and Heirship

NAME OF ATTORNEY
Address

May 16 2016 2:20 PM

KEVIN STOCK
COUNTY CLERK

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR PIERCE COUNTY**

NO. 16-4-00861-8

**ORDER ASSIGNING CASE TO JUDICIAL
DEPARTMENT AND SETTING REVIEW
HEARING DATE(PCLR3/PCLR40)**

Judge: **BRIAN TOLLEFSON**
Department: **08**
Docket Code: **ORACD**

Notice to Plaintiff/Petitioner(s):

- * Case filed, then served: Plaintiff(s)/Petitioner(s) shall serve a copy of this Order Assigning Case to Judicial Department on the Defendant(s)/Respondent(s) along with a copy of the Summons and Complaint.
- * Case served, then filed: Plaintiff(s)/Petitioner(s) shall serve a copy of this Order Assigning Case to Judicial Department within five (5) court days of filing.
- * Service by publication pursuant to court order: Plaintiff(s)/Petitioner(s) shall serve a copy of this Order Assigning Case to Judicial Department within five (5) court days of the Defendant(s)/Respondent(s) first response or appearance.

Trial Date:

A trial date may be obtained by filing a 'Note of Issue' for assignment of a trial date by noon at least six (6) court days prior to the date fixed for the mandatory hearing date set out below.

If a trial date is NOT obtained, failure to appear on the date below may result in dismissal of the case by the Court. Further, if the case has been fully resolved and all final papers have been entered by the Court, no appearance is required.

Mandatory Hearing Date: January 13, 2017 at 9:00 AM

At the time of this mandatory hearing , the Court may provide you with a Case Schedule which may include the trial date, if necessary.

Cases Agreed or by Default:

If you settle your case by entry of an order of default or agreement and all of the appropriate time requirements have been met, you may file a 'Note for Commissioner's Calendar to appear before a Court Commissioner for entry of all final papers unless presentation is allowed in the Commissioner's Ex Parte Department.

May 16, 2016

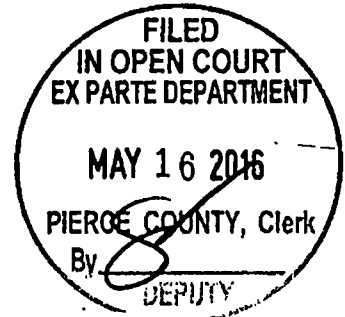
Date



BRIAN TOLLEFSON
Department 08



16-4-00861-8 46904344 DCLR 05-17-16



IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON
COUNTY OF PIERCE

Estate of
Leanna Ruth Mickelson

Petitioner,

vs. Re

Defendant,

No.: 16-4-00861-8

DECLARATION of

Heather Mickelson

Amended declaration

This declaration is made by:

Name: Heather Jean Mickelson

Address: 801 Dexter Ave N #623

Seattle WA 98109

Telephone: 253-209-7434

Age: 38

Occupation: Sales Executive

Relationship to the parties in this action:

Daughter

I DECLARE that:

I am the daughter of Leanna Ruth Mickelson

I have attempted to find my mother's will.

GG67

1212

5/17/2016

1 There is various property that I would have
2 inherited, including her out of state
3 domicile in Cabo San Lucas, Mexico. Under
4 Mexican law, it is my understanding,
5 that the property goes to her children.
6 I know ^{James Albert Mickelson} ~~that~~ ^{my share of her} is trying to sell ~~her~~ property.

7 Evidence attached of the active property listing.

8 This home was intended to live in after
9 her death by her children. If it is
10 allowed to sell then it will be a loss.

11
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21 I declare under penalty of perjury under the laws of the State of
22 Washington that the foregoing is true and correct.

23
24 Signed at Tacoma, Washington (City and State) on

MAY 16 2016

25
26
27 cx Heather Jean Mickelson

Signature

Print or Type Name

Request to file Last Will & Testament for Mother

Zachery Luce <Zachery.Luce@ucsfadlm.com>
To: Heather Benedict <hnbk2001@gmail.com>

Mon, May 8, 2016 at 4:14 PM

Heather -

I looked through all of our records, including the filing statements and all documents we prepared for both your mother and father. I did not find any indication that my office had prepared a will nor did I have a record of being for a will. We did not prepare a will for your mother. I thought that we had, but I was mistaken. My previous indication to you about us having a will was in error.

I do not have an original or copy of any will for your mother that was prepared by another law office either.

Since you have your mother's will, send us a copy and if you have an original, file it with the Superior Court.

The community property agreement (unlimited all ownership of property to your father).

Thank you.

Zac

Zachery S C Luce
Luce & Associates, P.S.
4505 Pacific Hwy. E., Suite A
Tacoma, WA 98424
T: (252) 922-8174
F: (252) 922-5202

www.luceandfirm.com

"I do not have an original or copy..."
4:14pm 5/9/16

IMPORTANT NOTICE TO EMAIL RECIPIENTS

1. The information contained in this e-mail and accompanying attachments are confidential documents when they are sent to you. If you are not the intended recipient of this e-mail, please do not print, copy, retransmit, or otherwise use the information. If you are not the intended recipient, please do not print, copy, retransmit, or otherwise use the information. If you are not the intended recipient, please do not print, copy, retransmit, or otherwise use the information. If you are not the intended recipient, please do not print, copy, retransmit, or otherwise use the information.

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3. The sender assumes that you are not using any attachments or the body of any e-mail. However, by reading the message and opening any attachments, you accept responsibility for being responsible for any viruses or other attacks.

4. All Luce & Associates' e-mails are intended to provide you with information and do not constitute an offer of legal services. Please do not rely on this information as a basis for legal action.

From: Heather Benedict (hnbk2001@gmail.com)

Sent: Monday, May 09, 2016 1:09 PM

To: Zachery Luce; Gale McArthur

Subject: Last Will

Download last Will

M GMail

Heather Benedict chmckhcn2003@gmail.com

Request to file Last Will & Testament for Mother

Zachery Luce <zachery.1uce@huckelwlm.com>
To: 'huckelwlm2003@gmail.com' <huckelwlm2003@gmail.com>

I believe we only have a copy, which we cannot file. We can only file the original. I am checking and will let you know.

Thanks,

Zac

From: huckelwlm2003@gmail.com [mailto:huckelwlm2003@gmail.com]
Sent: Monday, May 09, 2016 12:22 PM

To: Zachery Luce
Cc: Ken Luce
Subject: Request to file Last Will & Testament for Mother

"We only have a copy"

12:53 pm 5/9/16

69900

12121

9102/41/5

Appliances Clothes Dryer, Gas

•

Connectivity Abnormal

Connectivity Telephone: 2 lines

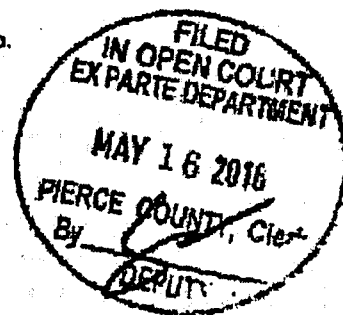
Flood Type: Paved

How To Show Agent To Accompany, By Appointment Only

From MEX 624 142 6039
From US (949) 200 6640
Email klaas@cityu.nl or cto@cityu.nl

From MEX 624 142 6039
From US (949) 200 6640
Email klaas@cityu.nl or cto@cityu.nl

4. Order of Adjudication of Intestacy and Heirship.


 SUPERIOR COURT OF THE STATE OF WASHINGTON
 FOR Pierce COUNTY

Estate of <u>Leeanna Ruth Mickelson</u>	No. <u>16 4 00861 8</u>
Deceased.	ORDER OF ADJUDICATION OF INTESTACY AND HEIRSHIP
	RCW 11.28.340

The Petition for Adjudication of Intestacy and Heirship of the estate of the above-named decedent has been presented on behalf of Heather Jean Mickelson. The court finds:

1. The decedent died on May 1, 2012 without a will.
2. The heirs of decedent and the distributive share of each heir pursuant to RCW 11.04.015 are the following:

Name and Address	Relationship	Date of Birth (if a Minor)	Distributive Share of Decedent's Estate
<u>Erk John Mickelson</u> <u>2023 Freeman Rd E</u> <u>Milton, WA 98354</u>	<u>Son</u>		<u>12.5% Separate property</u>
<u>Scott Christian Mickelson</u> <u>2804 90th Ave E</u> <u>Edgewood, WA 98371</u>	<u>Son</u>		<u>12.5% separate property</u>

Order of Adjudication of Intestacy and Heirship

 NAME OF ATTORNEY
 Address

Heather Jean Mickelson Daughter
801 Dexter Ave NW #629
Seattle WA 98107

12.5% Separate
Property

Gale Elizabeth McArthur-Daughter
6927 Park St. E
Five WA 98424

12.5% Separate
Property

James Albert Mickelson Husband
2804 90th Ave E
Edgewood, WA 98371

50% Separate
Property

100% Community
Property

ORDER

IT IS ORDERED that the decedent died intestate and the heirs of decedent's estate are as set forth in paragraph 2 above.

Dated MAY 16 2016

Y Arena Kirkendoll

Judge/Court Commissioner

Y ARENA KIRKENDOLL
COURT COMMISSIONER

Presented by:

Heather Jean Mickelson
Pro se

[Attorney], WSBA #

[Firm Name]

Attorneys for Petitioner

[Paralegal], Registration #

Paralegal

[Firm Name]

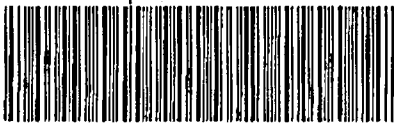
Order of Adjudication of Intestacy and Heirship

NAME OF ATTORNEY
 Address

0323

12134

5/18/2016



16-4-00861-8 46907882 PT 05-17-16

FILED
IN COUNTY CLERK'S OFFICE

MAY 17 2016

PIERCE COUNTY, WASHINGTON
KEVIN STOCK, County Clerk
BY _____ DEPUTY

Superior Court of Washington
County of Pierce

In re: Estate of
Leeanna Ruth Mickelson

No. 16-4-00861-8

Petition in order to
produce will.

Heather Jean Mickelson, Petitioner, pro-se, petitions the
court as follows:

Leeanna Ruth Mickelson, a resident of Pierce County,
Washington died on May 1, 2012.

Petitioner requests court to enter intestate or
show cause why it should not be intestate.

Petitioner is the daughter of the decedant and
resides at 801 Dexter Ave. North, #629, Seattle, WA 98109.

I certify under penalty of perjury under the
laws of the State of Washington that the
foregoing is true and correct to the best of
my knowledge.

Schedule of opposing parties/heirs:

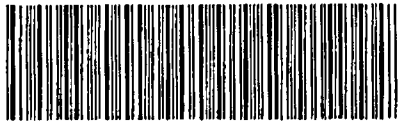
Name and Address:	Relationship
Erik John Mickelson 2025 Freeman Rd E Milton, WA 98354	Son
Scott Christian Mickelson 2804 90th Ave. E. Edgewood, WA 98371	Son
James Albert Mickelson 2804 90th Ave. E Edgewood, WA 98371	Husband
Heather Gale Elizabeth McArthur 6927 Park St E Fife, WA 98424	Daughter
Heather Jean Mickelson (non-opposing) 801 Dexter Ave N #629 Seattle, WA 98109	Daughter

All of the above heirs and distributors are of legal age.

5/17/16
Dated

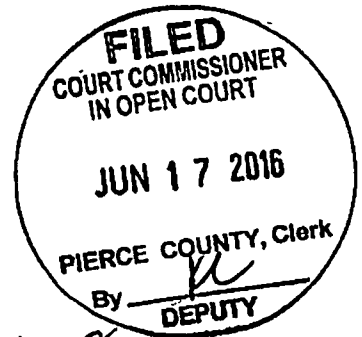
Heather Jean Mickelson

Signature of Party



16-4-00861-8 47094644 ORDSMWP 06-20-16

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY



IN THE MATTER OF THE

ESTATE OF

LEEANNA RUTH Mickelson

No. 16-4-00861-8

ORDER OF DISMISSAL

☒ Clerk's action require

This Matter having come before the COURT upon the moving party's Motion, and the COURT having heard the argument of the parties and having considered the records and files herein, it is now therefore,

ORDERED, ADJUDGED AND DECREED HAVING HEARD THE ARGUMENT
OF BOTH PETITIONER HEATHER MICKELSON AND
ANTHONY F. TAYLOR, ATTORNEY FOR JAMES A. MICKELSON
THIS COURT FINDS THAT THERE IS NO LEGAL BASIS
FOR THE PETITION TO MOVE FORWARD, THEREFORE
THE COURT ORDERS THE DISMISSAL OF THE PETITION
WITH PREJUDICE. THE REQUESTED TERMS UNDER
CR11 ARE RESERVED.

0297

12519

6/21/2016

[Lined area crossed out with a large diagonal line]

Dated: 6/17/2016

[Signature]

Judge/Commissioner

MARY E DICKE

COURT COMMISSIONER

Presented by:

Approved for entry:

Notice of presentation waived:

De. Pet was present but

Petitioner/WSBA #

was unavailable

signing her

document

Order (OR) – Page 2 of 2

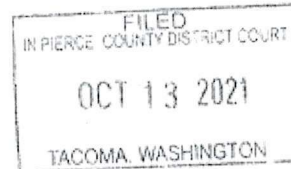
2

[Signature]

Respondent/WSBA #

24049

for JAMES MICKELSON



PIERCE COUNTY DISTRICT COURT, TACOMA, WASHINGTON

do hereby
certify that this document is a full, true and correct copy of
the original document on file in the above entitled court.

Certified on

MARCH 21 20 22

PIERCE COUNTY DISTRICT COURT
STATE OF WASHINGTON

HEATHER JEAN BENEDICT,

Plaintiff, NO. 1A909291C

vs.

PRO SE APPEANCE AND ANSWER

LU ELLEN SCOTT,

Hearing Noted: October 15, 2021

Defendant.

1. I am a Defendant in this action and submit this answer for myself only.

2. My correct name and current business address is:

Lu Ellen Scott
c/o Pierce County Superior Court Clerk
930 Tacoma Ave S, Tacoma, WA 98402
Phone: 253-798-7461

3. I deny the paragraph in the Notice of Small Claim for the following reasons:

- a. Over five years ago on May 16, 2016, I was in the Pierce County Superior Court Clerk's Office when near the end of the day an *ex parte* order that had been signed by the Magistrate came across my desk concerning a probate matter: *i.e.* Estate of Leeanna Mickelson. Because I had a question regarding that order as part of my responsibilities in the Clerk's Office, and because the Magistrate's court had closed, the next morning I presented my

1 question to the Magistrate and returned the subject order to her. Thereafter, I never again
2 took possession of the order nor saw it, and have no further personal knowledge of it
3 thereafter. I did not destroy the order or any government property as baselessly alleged by
4 Ms. Benedict, nor did I ever tell Ms. Benedict I had done so. As a practice, I do not give
5 those who appear before the court legal advice and do not recall doing differently as to
6 Ms. Benedict.

7 b. It should also be noted that, in addition to being factually baseless, Ms. Benedict's notice
8 of small claim appears to have been filed on August 10, 2021 – more than five years after
9 the alleged events of May 16, 2016. As such, her claim is barred by the three year general
10 statute of limitations for tort actions. *See* RCW 4.16.080(2).

11 c. Likewise, Ms. Benedict apparently has never filed an administrative claim regarding this
12 action with Pierce County Risk Management and thus her claim is barred on that ground
13 as well under RCW 4.96.020 ("No action subject to the claim filing requirements of this
14 section shall be commenced against ... any local governmental entity's officers, employ-
15 ees, or volunteers, acting in such capacity, for damages arising out of tortious conduct un-
16 til sixty calendar days have elapsed after the claim has first been presented to the agent of
17 the governing body thereof"). *See e.g. Levy v. State*, 91 Wn.App. 934, 944 (1998)(failure
18 to comply with the claim filing statute against a defendant is "jurisdictional,"); *Kleyer v.*
19 *Harborview Medical Center*, 76 Wn.App. 542, 546 (1995) (failure to file "a claim in
20 proper fashion results in dismissal of the suit."); *Hintz v. Kitsap Cy*, 92 Wn.App. 10, 14
21 (1998) ("The proper remedy for failure to comply with a notice of claim statute is dismis-
22 sal of the suit.")(citing *Pirtle v. Spokane Pub. Sch. Dist. No. 81*, 83 Wn.App. 304, 309
23 (1996), *review denied*, 131 Wn.2d 1014 (1997)).

24 I declare under penalty of perjury of the laws of the State of Washington that the foregoing is

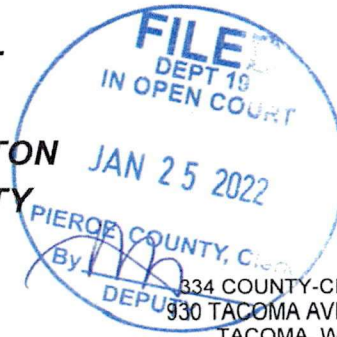
CERTIFICATE OF SERVICE

On October 13 2021, I hereby certify that I delivered a true and accurate copy of the foregoing Pro Se Appearance and Answer via Priority Mail – One Day and via USPS, regular mail, postage paid, with appropriate instruction to forward the same to the following:

Heather Jean Benedict
1037 NE 65th Street
81366
Seattle, WA 98115

s/JEANINE L. LANTZ
JEANINE L. LANTZ

**SUPERIOR COURT
OF THE
STATE OF WASHINGTON
FOR PIERCE COUNTY**



Philip K. Sorensen, JUDGE
Monica Schmuck, Judicial Assistant
Department 19
(253) 798-7735

334 COUNTY-CITY BUILDING
930 TACOMA AVENUE SOUTH
TACOMA, WA 98402-2108

January 25, 2022

Heather Benedict
1037 N.E. 65th Street, #81366
Seattle, WA 98115

RE: IN RE ESTATE OF LEEANNA RUTH MICKELSON
Pierce County Cause No. 16-4-00861-8

Dear Ms. Benedict:

As stated in my letter dated January 14, 2022, no motion may be filed or heard in this closed case without permission of the Court. Department 19 will not hear matters related to this closed case.

Sincerely,


Philip K. Sorensen
Presiding Judge

cc: Pierce County Clerk for filing
Department 22
Kenyon Luce



Washington State Court of Appeals

Division Two

909 A Street, Suite 200, Tacoma, Washington 98402
Derek Byrne, Clerk/Administrator (253) 593-2970 (253) 593-2806 (Fax)

General Orders, Calendar Dates, and General Information at <http://www.courts.wa.gov/courts> **OFFICE HOURS: 9-12, 1-4.**

July 20, 2022

Michael Thomas Smith
Luce & Associates, P.S.
5308 12th St E
Tacoma, WA 98424-2796
Michael.Smith@lucelawfirm.com

F. Hunter MacDonald
Attorney at Law
2102 N Pearl St Ste 400
Tacoma, WA 98406-2550
fifelaw1@outlook.com

Heather Benedict
1037 NE 65th #81366
Seattle, WA 98115
hjelbenedict@gmail.com

CASE #: 56745-8-II: Estate of Leeanna Mickelson
Case Manager: Jodie

Counsel and Parties:

In Response to Appellant's Motion for Sanctions: Respondent has failed to timely file the Respondent's Brief by the due date of July 18, 2022. Unless the Respondent's Brief or a Motion for Extension of Time is received with 10 days from the date of this letter, by **August 1, 2022**, the matter will be referred to the Clerk/Administrator. Sanctions in the amount of \$250 may be imposed without further notice. See RAP 18.9(a)

Sincerely,

A handwritten signature in black ink, appearing to be "Derek M. Byrne", is written over a horizontal line.

Derek M. Byrne
Court Clerk

DMB:jlt